

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 260 of 1999

with

CIVIL APPLICATION No 4656 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

BARODA DISTRICT PANCHAYAT

Versus

CHANDRAVADAN CHANDDRAKANT JOSHI

Appearance:

MR HS MUNSHAW for Appellants
MR PERCY KAVINA for MR NAVIN K PAHWA for
Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 30/07/1999

ORAL JUDGEMENT

Heard learned Counsel for the respective parties.

The appellants in the present appeal filed under Order 43 Rule 1 of the Civil Procedure Code are the original defendants. They have brought in challenge the ex parte ad-interim order dated 1.3.1999 recorded in application at Ex.5 in Special Civil Suit No.215 of 1999 whereby the appellants were restrained from implementing the letter dated 28.2.1999 and collecting octroi for the goods brought in within the territory of Harni Panchayat pursuant to the contract dated 31.8.1998 granted in favour of the respondents. On perusal of the order impugned it becomes clear that the said ex parte ad-interim relief was granted for limited period upto 11.3.1999. The defendants appellants have not appeared before the lower court nor have they filed written statement up-till now.

2. The short question which is required to be dealt with in this Appeal is whether the impugned order recorded below Ex.5 is in terms of Order 39 Rule 3 (proviso) of the Civil Procedure Code or not. Learned advocate Mr.Munshaw made his elaborate submissions in this regard. He also drew my attention that a previous suit was also filed by the respondents claiming the same relief. Since ad-interim relief was granted in that suit in their favour, the appellants preferred an appeal in the District Court and the District Court vide its order quashed and set aside the injunction granted in favour of the respondents. Therefore, the respondents preferred revision before the High Court and since they could not get relief from the High Court, the said suit was withdrawn.

3. The present suit is filed suppressing the fact about filing of the previous suit and withdrawal of the same.

4. Learned advocate Mr.Kavina countered the aforesaid submissions by saying that it is true that previous suit was filed but the said fact was incorporated in this suit, therefore, the respondents have not suppressed any material facts.

5. On having perusal of the impugned order, it becomes clear that the trial Court has not given reasons as to why ex parte ad-interim order was issued without hearing the other side.

6. I am not inclined to entertain this appeal on this short and technical ground, mainly because the impugned order was granted for a limited period and thereafter it was extended from time to time as the

appellants have straightway filed this Appeal from Order without approaching the lower court by filing written statement. Thus, on the facts and circumstances emerging from the record of the case, I am of the opinion that interest of justice would best be served by directing the trial court to take up hearing of the injunction application at Ex.5 immediately and to hear and dispose of the same in accordance with law within a period of four weeks from the receipt of writ from this court. The appellants shall also file written statement within a period of one week hereof. It is hereby directed that respondents Nos.1, 2 & 3 shall maintain a separate account of the octroi which they would collect hereinafter and the said amount shall be deposited in a nationalised bank in a separate account and shall not be withdrawn without prior order of the lower court till decision of the application at Ex.5.

7. In view of the aforesaid observations and directions, this Appeal stands disposed of, however, with no order as to costs.

8. There shall be no order on Civil Application No.4656 of 1999.

9. It is hoped that both the parties shall cooperate in the hearing of Ex.5 and get the matter disposed of in the aforesaid time-bound programme.

(KMG Thilake)

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